THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.24577 of 2005

Date:26.12.2005

P.Venkata Rao

--------PETITIONER

Government of A.P. and others

---------RESPONDENTS

ORDER:

The petitioner was granted lease of maintaining and running a Tollgate across the Kommamuru canal on Tenali-Narakoduru road in Guntur District from 01.04.2004 to 31.03.2006. The corresponding lease deed was executed on 31.03.2004 and was registered with the fifth respondent. The lease deed is said to have been released, on being satisfied that proper stamp duty and necessary registration charges were paid.

The audit party of the registration department had verified the records of the fifth respondent and found that there is a deficit of Rs.2,18,784/- towards stamp duty and a sum of Rs.14,640/- towards registration charges on the lease deed dated 31.03.2004. On receiving the report of the audit party, the fifth respondent addressed a letter, dated 29.09.2005, to the parties to the document, namely, the petitioner and the first respondent, requiring them to pay a sum of Rs.2,33,474/- within the time stipulated therein. Consequently, the first respondent addressed a letter, dated 07.11.2005, requiring the petitioner to deposit the said amount by 20.11.2005, with a warning that in case the amount is not paid within that time, the Tollgate would be taken over. The petitioner challenges the said proceedings.

It is contended that the respondents did not follow the procedure prescribed under the Indian Stamp Act (for short 'the Act'), particularly, the one prescribed under Section 41-A of the Act.

The first respondent filed a counter-affidavit. It narrated the facts that led to the issuance of the impugned order. It contends that being a party to the document, the petitioner is under obligation to pay the stamp duty and the impugned order was passed on the basis of the findings recorded by the audit party of the registration department.

Heard the learned counsel for the petitioner and the learned Government Pleader for R & B.

The lease deed executed by the first respondent in favour of the petitioner on 31.03.2004 was registered and released by the fifth respondent. Section 41-A of the Act prescribes the procedure to be followed in the event of any deficiency of stamp duty or registration charges being noticed, after a document is registered and released. In such cases, the Collector is under obligation to issue notice to the parties concerned, directing them to show cause as to why the deficit amount shall not be collected. A reasoned order is required to be passed on consideration of the explanation. Sub-section 2 thereof provides for an appeal to the Chief Controlling Revenue Authority. The Registrar, with whom the document is registered, has hardly any role to play in the matter.

In the instant case, the entire procedure prescribed under Section 41-A of the Act was given a goby. The Collector, the fourth respondent herein, did not serve any notice, as contemplated under that provision, upon the petitioner or the first respondent. The fifth respondent has taken upon himself, the task of collecting the amount, without there being any adjudication by the fourth respondent, much less, a show cause notice preceding it. When the petitioner was compelled to make the deposit, this Court passed an interim order. In the light of the same, the fifth respondent is said to have refunded the demand draft collected from the petitioner. However, the same is now said to be lying with the first respondent.

The obligation of the petitioner to pay any amount towards deficit stamp duty or registration charges would arise, if only the fourth respondent has initiated proceedings contemplated under Section 41-A of the Act. Inasmuch as such proceedings have not been initiated, neither the first respondent nor the fifth respondent is entitled to require the petitioner to pay any amount.

In that view of the matter, the writ petition is allowed and the impugned order, dated

07.11.2005, is set aside. The first respondent is directed to refund the demand draft submitted by the petitioner for a sum of Rs.2,33,474/- forthwith. It shall be open to the fourth respondent to take necessary steps in accordance with Section 41-A of the Act and the liability of the petitioner would arise only on culmination of such proceedings. No costs.

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26.12.2005

Note: Issue C.C. in three days

(B/o)

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